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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/910,516	07/20/2001	Timothy Glass	82543	2105
24628	7590	08/24/2004	EXAMINER	
			NOVOSAD, JENNIFER ELEANORE	
		ART UNIT		PAPER NUMBER
				3634

DATE MAILED: 08/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<i>PL</i> <b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/910,516	GLASS, TIMOTHY <i>J</i>
	<b>Examiner</b> Jennifer E. Novosad	<b>Art Unit</b> 3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 29 March 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-18 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                      | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)               |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date. _____ . | 6) <input type="checkbox"/> Other: _____ .  |

## **DETAILED ACTION**

*At the outset*, it is noted that the Examiner of record in this application has changed. Please direct all future correspondence concerning this application to Examiner Jennifer E. Novosad, Art Unit 3634.

This second non-final Office action is in response to the amendment of March 29, 2004 by which claim 1, 9, and 15 were amended.

### ***Abstract***

Applicant is reminded of the proper language and format for an abstract of the disclosure. The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "is provided" in line 2.

### ***Claim Objections***

Claim 1 is objected to because in line 6, it appears that "permitting" should be changed to --permit--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-4, 6, 8, 9-12, 15, 16, and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: between the cells and the base and shaft.

Claim 1, lines 9 and 10, claim 2, line 2, claim 6, line 2, claim 10, line 2, claim 15, lines 9 and 10, recite the limitation "the cell structure". There is insufficient antecedent basis for this limitation in the claims.

Claims 3, 11, and 16 are rendered indefinite since the metes and bounds of the claims cannot be properly ascertained since it is unclear what structure and elements are defined by "lazy suzan".

Claims 4 and 12 are rendered indefinite since the claims fail to further limit the claimed structure of the tower.

The recitation "substantially the entire front surface of an article" in claims 8 and 18 renders the claims indefinite. *In particular*, an article is not an element of the claimed device and it is improper to seek to define claimed structure based on a comparison to some unclaimed element. *In this case*, the boundaries of the claims cannot be properly ascertained because one would not know whether their device infringed the instant claim until someone else later added an article. *Accordingly*, the features of the device, itself, must be defined instead of relying upon a comparison with an ascertained element.

The terms "easily" in claim 9 (line 6, two occurrences) and "easy" in claim 15 (line 7) are relative terms which render the claims indefinite. The terms "easily" and "easy" are not defined by the claims, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

The recitation "may" in the last line of claim 15 renders the claim indefinite since what "may be" to one "may not be" to another and thus the metes and bounds of the claim cannot be properly ascertained.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 5, 7, 8, 9, 12, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,844,230 (*Hudson et al. '230*).

*Hudson et al. '230* disclose a tower for storage, display and unimpeded accessibility of articles which comprising a rigid elongated unitary structure (1) having a top (15), a bottom and a plurality of horizontal (15) and vertical (28) members positioned the top and bottom to form a plurality of cells which comprise at least one opening, i.e., a front, rear and side opening, to permit unimpeded placement and removal of articles; a base (3) and a shaft (6) fixed to the base (3) and rotatably connected to the cells, i.e., through element 9 and 12; the shaft (6) has a threaded end located proximate the base (3)

and a connecting assembly (5) is attached to the threaded end to maintain the shaft (6) fixed to the base (3).

Claims 1, 2, 4-6, 8, 9, 12, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,033,626 (Platti '626).

Platti '626 discloses a tower for storage and display of articles comprising a rigid elongated unitary structure having a top, a bottom and plurality of horizontal and vertical members defining cells (Figure 2); a base (3) and a shaft fixed to the base and rotatably connected to the cells; a knob (5) is connected to the top; each cell has a front, rear and side opening.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 3, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Platti '626 as applied to claims 1, 2, 4, 6, 9, 12, and 13 above, and further in view of U.S. Patent No. 6,508, 021 (Brozak, Jr. '021).

Platti '626 discloses the tower as advanced above.

The claims differ from Platti '626 in requiring a connector assembly mounted to the base and rotatable connected to the cells defining a lazy suzan.

Brozak, Jr. 021 teaches the use of a connector assembly, which can be defined as a lazy suzan, so that a tower can be rotated on a base.

*Thus*, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the tower of Platti '626 with a connector assembly, as taught by Brozak, Jr. for ease in use to the consumer since articles placed therein can be accessed more easily.

Claims 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Platti '626 in view of Brozak, Jr '021.

Platti '626 discloses the tower as advanced above.

The claims differ from Platti '626 in requiring a connector assembly mounted to the base and rotatable connected to the cells (claim 15) defining a lazy suzan (claim 16).

Brozak, Jr. 021 teaches the use of a connector assembly, which can be defined as a lazy suzan, so that a tower can be rotated on a base.

*Thus*, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the tower of Platti '626 with a connector assembly, as taught by Brozak, Jr. for ease in use to the consumer since articles placed therein can be accessed more easily.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-18 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

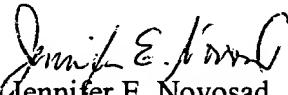
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-

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305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703)-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jennifer E. Novosad  
Examiner  
Art Unit 3634

Jennifer E. Novosad/jen  
August 19, 2004